IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 466 OF 2005.

Shri Curio Ganesh Gaonkar
and another. .... Petitioners.

Versus

Shri Chandru Sukto Velip
and 4 others. .... Respondents.

Shri J. P.Mulgaonkar, Advocate for the Petitioners.

Shri R.G. Ramani, Advocate for the Respondent Nos.1, 2, 3, 4, 5(a) to 5(c).

CORAM: R.M.S.KHANDEPARKAR, J.

DATE : 27th JANUARY, 2006.

ORAL JUDGMENT:

Heard. Rule. By consent, the Rule is made returnable forthwith.

2. The petitioners challenge the Order passed by the Civil Judge, S.D., Quepem on 26th July, 2005 in Civil Misc. Appln No. 11/03/B/A in Regular Civil Suit No. 80/74 rejecting the application filed by the petitioners under Section 152 of C.P.C.

3. The correction which was sought for by the petitioners was that of inclusion of survey number with reference to the suit property in respect

of which the decree was passed by the trial Court on the ground that such inclusion of survey number was accidentally omitted even though the Judgment refers to production of the document like Index of Land and Survey plan of the property.

4. Placing reliance in the decisions in the matter of **Shankergouda v. Garangouda and others** reported in A.I.R. 1976 Karnataka 204 and ***Smt. Vidyavati Bai v. Smt. Parkash Vati Devi and another*** reported in A.I.R. 1976 Delhi 275, learned Advocate for the petitioners submitted that non-inclusion of survey number in the decree was an accidental omission on the part of the court below. Even though there was no reference to the survey number in the plaint, the petitioners had produced the survey plan along with the index of land which clearly disclosed the survey number of the suit property and therefore non-reference to survey number in the judgment and decree passed by the trial Court was accidental omission which could have been corrected in exercise of the powers under S.152 of C.P.C. The court below by refusing to exercise the said power has refused to exercise the jurisdiction illegally and the same requires interference by this court.

5. Learned Advocate appearing for the respondents, on the other hand, drawing attention to the reply filed by the respondents to the

application under Section 152 of C.P.C. before the trial Court, submitted that the property bearing survey No. 34/1 in fact stands in the names of the petitioners and respondent in the survey record and the survey record has already been promulgated. He further submitted that the decree relates to the decree bearing matriz No. 157 claimed by the petitioners and in terms of the description of the boundaries as disclosed in the plaint. In the circumstances, therefore, according to the Advocate there is neither accidental error nor one by omission so as to exercise the powers under section 152 C.P.C.

6. It is an undisputed fact that the suit was filed in the year 1974. New survey conducted in the State of Goa was not promulgated prior to 1976. The promulgation was either in the year 1976 or thereafter. Being so, it cannot be said that the failure to mention survey number in the plaint was either by a mistake or on account of accidental omission by the petitioners. Undoubtedly the judgment passed by the trial Court refers to the fact that the petitioners had produced the document of survey plan and index of land. However, analysis of the document in the judgment nowhere discloses reference to those documents as forming basis to arrive at the finding of ownership and possession of the petitioners in relation to the property which was described with reference to its boundaries and matriz No.157 as well as the name of the property. Even the lower appellate

court has confirmed the finding arrived at by the trial court solely on the basis of the matriz record and boundaries of the property without any reference to or reliance upon the new survey records either in the form of index of land or survey plan. Being so, it cannot be said that there was accidental omission on the part of the trial court t0 refer to the survey number either in the judgment or decree passed by the trial court. On this ground itself, therefore there was no ground for exercise of the powers under S.152 to introduce the survey number in the judgment or decree. Hence no fault can be found with the impugned order rejecting the application under Section 152 C.P.C.

7. The decision of the Karnataka High Court was in the fact where the plaintiff had stated the survey number in the plaint as " 304 " while the correct survey number was " 203 " and to that extent the correction was allowed. In the case before the Delhi High Court the father of the minor child was wrongly referred to as guardian-ad-litem when in fact the mother was appointed as the guardian. The mistake was allowed to be corrected. Both these decisions were delivered in the facts of the cases which were totally different from the case in hand and therefore of no help to the petitioners.

For the reasons stated above, the petition is dismissed. Rule discharged with no order as to costs.

R.M.S. KHANDEPARKAR, J.

sl.